

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID RADEMAKER,) No. C 10-1659 LHK (PR)
Plaintiff,) ORDER DISCHARGING ORDER
vs.) TO SHOW CAUSE; GRANTING
A. HEDGEPETH, et al.,) EXTENSION OF TIME
Defendants.)

)

Plaintiff, a state prisoner proceeding *pro se*, filed a federal civil rights complaint pursuant to 24 U.S.C. § 1983 against employees of Salinas Valley State Prison. On May 3, 2010, the Court ordered the complaint served upon the five defendants and issued a pretrial dispositive motion schedule in which Defendants were directed to file either a motion for summary judgment or other dispositive motion or notify the Court that the matter was not appropriate for such a motion within ninety days from the date the order of service was filed.

On August 13, 2010, after the deadline date for filing a dispositive motion had passed, four Defendants, through counsel, filed a Notice of Waiver of Answer. On September 7, 2010, after having received no dispositive motion nor any other communication from counsel, the Court issued an Order to Show Cause why this matter should not be set for trial.

On September 16, 2010, counsel filed his response, indicating that Defendants did not file a dispositive motion by the August 2, 2010 deadline because “they did not even appear until

1 8/13/10." The summons was issued on May 4, 2010. (Doc. No. 10.) The summons directed
2 Defendants to serve an answer or a motion on Plaintiff within 21 days after service of the
3 summons. Regardless of when counsel appeared on behalf of Defendants, Defendants were
4 required to respond within 21 days after service. Unfortunately, the Court cannot determine
5 when Defendants were actually served, though it appears unlikely that service was not executed
6 on Defendants for more than two months after the summons issued.

7 Nevertheless, because it appears that Plaintiff will not be prejudiced if Defendants submit
8 a dispositive motion later than the initial deadline, the Court will accept counsel's response and
9 discharge the Order to Show Cause. In the future, counsel is advised that the correct practice is
10 to file a motion for an extension of time on or before the deadline date, instead of "anticipat[ing]
11 requesting a new deadline once they got a sense of how long it would take to complete all those
12 activities necessary to file a dispositive motion."

13 Moreover, despite Defendants' failure to formally request an extension of time to file a
14 dispositive motion, the Court also construes Defendants' response as a request for an extension
15 of time. So construed, Defendants' request for an extension of time to file a dispositive motion
16 is GRANTED. Defendants shall file their dispositive motion on or before **December 3, 2010**.
17 Plaintiff shall file his opposition within **thirty (30) days** from the date the motion is filed.
18 Defendants shall file their reply **fifteen (15)** days thereafter.

19 IT IS SO ORDERED.

20 DATED: 10/1/2010


21 LUCY H. KOH
United States District Judge

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